

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
TAITOKERAU DISTRICT**

**A20150003505**

UNDER Section 18(1)(a), Te Ture Whenua Māori Act 1993

IN THE MATTER OF Koutu Block

BETWEEN TONI WELSH  
Applicant

Hearing: 27 April 2016, 129 Taitokerau MB 231-243  
30 August 2016, 139 Taitokerau MB 18-24  
8 June 2018, 174 Taitokerau MB 230-239  
24 October 2018, 184 Taitokerau MB 59-82  
(Heard at Whangarei)

Judgment: 20 August 2019

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**JUDGMENT OF JUDGE M P ARMSTRONG**

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## Introduction

[1] The Koutu block is located at Kawerua in Waipoua. This block is a traditional landing place associated with Te Roroa. On 6 April 1897, the Native Land Court granted an order vesting this block into 12 people. On the same day, a succession order was granted for one of those 12. Over 120 years later, the title to the block remains unchanged.

[2] Confusion reigns as to the effect of the 1897 orders. Some argue the 12 own the land personally, others say they hold the land on trust for the Te Roroa tribe. This decision determines that issue.

## What legal principles apply?

[3] I have jurisdiction to determine this matter per ss 18(1)(a) and (i) of Te Ture Whenua Māori Act 1993 (“the Act”).<sup>1</sup> In *Tau v Ngā Whānau o Morven and Glenavy*, the Māori Appellate Court considered whether land vested by the Native Land Court in 1887 was held on trust. The Court took the following approach:<sup>2</sup>

- (a) The primary inquiry is in relation to evidence contemporaneous with the issue of the title orders;
- (b) At a secondary level, the record of dealings in the Māori Land Court are relevant to the extent they demonstrate a consistent attitude towards the land amongst those named on the title and their descendants;
- (c) Evidence from participants in the current proceeding may also be relevant but is likely to be of less weight given its distance from events and the fact that it is necessarily hearsay;
- (d) Overall the Court must assess the evidence in its totality.

[4] I adopt this approach. I first consider the evidence which falls into these respective categories before turning to decide whether those on the title hold the land personally or on trust.

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<sup>1</sup> *Tau v Ngā Whānau o Morven and Glenavy – Waihou 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

<sup>2</sup> *Ibid*, at [168].

**Is there evidence contemporaneous with the issue of the title orders which show that this land is held on trust?**

[5] A certificate of title to the Koutu block first issued on 26 July 1872, pursuant to the Native Lands Act 1865 and 1867.<sup>3</sup> That certificate of title, and the Court minute and order on which that title was based, cannot be located. The subsequent Court records indicate that Judge Manning awarded the title to Tiopira Rehe and Peneti Pana.<sup>4</sup>

[6] The record sheet for the Koutu block contains the following handwritten notation:

Originally held in trust for Te Roroa Hapu

See Judge Manning's minute on block file

In the Nature of a Reserve.

[sic]

[7] On 27 February 1894, the Court heard an application by Rewiri Tiopira to succeed to his father Tiopira Rehe in the Koutu block. The Court minute records the following:<sup>5</sup>

Rewiri Tiopira to succeed Tiopira Kinaki alias Rehe in Koutu. Applicant sworn – knew deceased. He died at Waipoua in '87. He was a trustee for Koutu reserve. He left a will. Have not brought it. He was chief of Te Roroa.

Order in favour of Rewiri Tiopira to succeed his father Tiopira Rehe as trustee for Te Roroa tribe in the Koutu reserve 3a.3r.20p.

[8] On 16 July 1895, an order in council was published in the *New Zealand Gazette* authorising the Court to determine whether the Koutu block was held on trust and, if so, to determine who was beneficially entitled to the land per s 14(10) of the Native Land Court Act 1894 (“the 1894 Act”).<sup>6</sup>

[9] Section 14(10) of the 1894 Act states:

14. Subject as hereinafter mentioned the Court shall have jurisdiction, -

...

<sup>3</sup> The Court minute at 19 Northern MB 118 (19 N 118) states the certificate of title was dated 28 June 1871.

<sup>4</sup> See 19 Northern MB 112-113 (19 N 112-113) dated 5 April 1897, 19 Northern MB 118-119 (19 N 118-119) dated 6 April 1897 and 27 Northern MB 9-10 (27 N 9-10) dated 28 February 1894.

<sup>5</sup> 27 Northern MB 9-10 (27 N 9-10).

<sup>6</sup> “Conferring Jurisdiction on Native Land Court” (18 July 1895) 54 *New Zealand Gazette* 1097 at 1098.

- (10) To determine whether or not any land heretofore dealt with by the Court, of which there has been no alienation other than a lease, mortgage, or contract for sale, upon which the purchase-money has not been paid, was, on the investigation of title thereto, or partition thereof, intended by the Native Land Court, or by the nominal owner or owners of such land (whether such nominal owner or owners be a tribe, hapu, or section thereof respectively, or a definite individual or individuals), to be held by the nominal owner or owners in trust for Natives not named in the title to such land; and to determine who are the Natives, if any, entitled beneficially to any land so held in trust, and to order the inclusion of such Natives in the title, either together with or in lieu of the nominal owners, and for the purpose aforesaid to order the cancellation or amendment of any existing instrument of title and the issue of such new Crown grants, or other instruments of title as may be necessary:

Provided that the Court shall not proceed to exercise this jurisdiction unless the Governor in Council shall by order authorise the same to be done:

....

[10] On 5 April 1897, the Court heard the application per s 14(10) of the 1894 Act. The Court minute records as follows:<sup>7</sup>

Te Koutu 3.3.20

Hapakuku Moetara sworn: Under section 10 of section 14 of the Act of 1894. I ask that I and others of the Roroa tribe may be included in the title of this land. The 2 trustees:

ma Tiopira Rehe and

ma Peneti Pana are of Te Roroa tribe.

They are owners of this land with the rest of us – Tiopira Rehe is dead – (successor Rewiri Tiopira ma).

Case adjourned to tomorrow to enable the witness to prepare a list of the persons interested and the shares of the same.

[11] The Court reconvened the following day. The minute records:<sup>8</sup>

Koutu

Under sect 10 of sect 14 continued from page 113.

Hapakuku Moetara: I hand to the a list of the persons entitled to this land – List N1 is handed to the court and read – and objectors challenged. [sic]

No objectors.

<sup>7</sup> 19 Northern MB 112–113 (19 N 112-113).

<sup>8</sup> 19 Northern MB 118–119 (19 N 118-119).

List passed.

It is ordered that the certificate of title for this land dated 28 June 1871 be cancelled also the Crown grant the same, if any - and in lieu thereof that a Crown grant do issue to (sharing equally)

1.	Hapakuku Moetara	ma
2.	Wiremu Rangatira	ma
3.	Iehu Hapakuku	ma
4.	Raniera Te Roori	ma
5.	Peneti Pana	ma
6.	Rewiri Tiopira	ma
7.	Hone Tuoro	ma
8.	Hohaia Paniora	ma
9.	Matene Naera	ma
10.	Ahenata Rewiri	fa
11.	Te Roore Taoho	ma
12.	Wiremu Tuwhare	ma

[12] Immediately following the grant of the above order, the Court heard an application by Hapakuku Moetara to succeed to Rewiri Tiopira. The minute records as follows:<sup>9</sup>

Hapakuku Moetara: Rewiri Tiopira is dead. His death has been already proved in this Court

See page 22

I claim for his sister Hiria Tiopira fa

Objectors challenged

None

Orders made as prayed

[13] A sealed order was issued following this hearing which states:<sup>10</sup>

“The Native Land Court Act, 1894”

In the  
Native Land Court,  
of New Zealand,  
Auckland District

In the matter of an Order in Council bearing date the 16<sup>th</sup> day of July 1895, confirming jurisdiction upon the Court under Subsection 10 of Section 14 of “The Native Land Court Act, 1894”

and

<sup>9</sup> 19 Northern MB 119 (19 N 19).

<sup>10</sup> 19 Northern MB 118-119 (19 N 118-119).

In the matter of the land known as Koutu situate near Hokianga containing 3 acres 3 roods and 20 perches heretofore held under a certificate of title under Native Lands Act 1865 and 1867 dated the 26<sup>th</sup> day of July 1872

At a sitting of the Court held at Rawene before John Alexander Wilson, Esquire, Judge and Karaka Kereru Tarawhiti, Assesor.

Upon enquiry made into the nature of the title to the said land and into the existence (if any) of an intended trust it appearing such a trust as exist it is hereby ordered that the persons named in the schedule hereto attached and therein numbered respectively from one to twelve both inclusive are the persons beneficially entitled under the said trust subject to any existing lease, mortgage or contract for sale thereon.

It is further ordered that the said Certificate of Title be and the same is hereby cancelled and in lieu thereof a Crown Grant dated as from the 26<sup>th</sup> day of July 1872 do issue in favour of the persons named in the said schedule, and that the land be inalienable by sale only.

As witness the hand of John Alexander Wilson, Esquire Judge and the seal of the Court this 6<sup>th</sup> day of April, 1897

[14] The schedule to this order lists the following 12 people:

- (a) Ahenata Rewiri;
- (b) Hapakuku Moetara;
- (c) Hohaia Paniora;
- (d) Hoone Tuoro;
- (e) Hiria Tiopira;
- (f) Iehu Hapakuku;
- (g) Matene Naera;
- (h) Peneti Pana;
- (i) Raniera Te Roore;

- (j) Te Roore Taoho;
- (k) Wiremu Rangatira;
- (l) Wiremu Tuwhare.

[15] This is the same list as that produced by Hapakuku Moetara, though Rewiri Tiopira was substituted by his sister Hiria pursuant to the succession order granted on the same day. Those 12 people named in the order are still recorded as the owners of the Koutu block today.

**Does the record of subsequent dealings in the Māori Land Court demonstrate a consistent attitude by those 12 persons and their descendants?**

[16] Following the 1897 orders, there were few dealings in the Court concerning the Koutu block. The Court file does contain the following correspondence.

[17] On 21 November 1944, Ata Paniora wrote to the Registrar asking if trustees were appointed for “the Landing Reserve known as Kawerua”.<sup>11</sup> After the appropriate search fee had been paid the Registrar responded by letter dated 17 January 1945. This states:<sup>12</sup>

... the following persons are the trustees appointed for the Kawerua Landing Reserve which is known as Koutu Block: -

- |    |                  |       |
|----|------------------|-------|
| 1. | Aherata Rewiri   | f     |
| 2. | Hapakuku Moetara | m     |
| 3. | Hohaia Paniora   | m     |
| 4. | Hoone Tuoro      | dec'd |
| 5. | Hiria Tiopira    | f     |
| 6. | Iehu Hapakuku    | m     |
| 7. | Matene Naera     | m     |
| 8. | Peneti Pana      | m     |
| 9. | Raniera Te Roore | m     |

<sup>11</sup> Letter from Ata Paniora to Court Registrar, 21 November 1944.

<sup>12</sup> Letter from Court Registrar to Aata Paniora, 17 January 1945.

10.	Te Roore Taoho	m
11.	Wiremu Rangatira	m
12.	Wiremu Tuwhare	m
Successors to Hoone Tuoro, dec'd.		
	Reupena Tuoro	m
	Hori Tuoro	m
	Hana Tuoro	f

[18] On 16 April 1945, Daniel Mackie wrote to the Registrar on behalf of Pipi Tiopira seeking “full details and ownership of Kawerua Landing Reserve known as Koutu block”.<sup>13</sup> The Registrar responded on 15 May 1945 as follows:

Referring to your recent inquiry regarding the above block I have to advise that it may be wise now for the descendants of the owners appointed by the Court on the 6<sup>th</sup> April, 1937, to make application under Section 5 of the Native Purposes Act, 1937 to have this land set apart as a Native Reservation. Following the issue of our Order in Council declaring the land a reservation trustees could be appointed by the Court and the trustees should be representative members of the families of the several deceased at present shown in the title to the said land.

A list of proposed trustees could be submitted to the Court at the time of the hearing of the application under Section 5 of the Native Purposes Act, 1937.

[19] On 14 August 1945, Marama Russell wrote to the Registrar:<sup>14</sup>

I am a daughter of Hapakuku Moetara (deceased) being one of the trustees of the above reserve and I have the pleasure of asking you to send me a list of all the trustees in this reserve also to let me have a plan or a sketch of same my reason for asking for this plan is that a certain person here has ring fenced part of this reserve thus claiming it trusting that you would oblige me in this matter.

[20] The Registrar responded on 21 September 1945:<sup>15</sup>

... I have to advise that the following persons are the trustees appointed for the Kawerua Landing Reserve which is known as Koutu block:-

1.	Aherata Rewiri	f
2.	Hapakuku Moetara	m
3.	Hohaia Paniora	m

<sup>13</sup> Letter from Daniel Mackie to Court Registrar, 16 April 1945.

<sup>14</sup> Letter from Marama Russell to Court Registrar, 14 August 1945.

<sup>15</sup> Letter from Court Registrar to Marama Russell, 13 September 1945.

4.	Hoone Tuoro	dec'd
5.	Hiria Tiopira	f
6.	Iehu Hapapkuku	m
7.	Matene Naera	m
8.	Peneti Pana	m
9.	Raniera Te Roore	m
10.	Te Roore Taoho	m
11.	Wiremu Rangatira	m
12.	Wiremu Tuwhare	m

Successors to Hoone Tuoro, deceased.

Reupena Tuoro	m
Hori Tuoro	m
Hana Tuoro	f

[21] On 25 March 2010, the Koutu block came before Judge Ambler as part of the Māori freehold land registration project. The minute contains the following note from the Deputy Registrar:<sup>16</sup>

Research indicates that the twelve original owners have variously been referred to as trustees but no evidence can be unearthed which indicates that these twelve were anywhere appointed as trustees. They were originally referred to as owners.

[22] Judge Ambler commented as follows:<sup>17</sup>

This land is clearly Māori freehold land and the status order to that effect is appropriate. However, I note for the record that there is an issue as to whether the 12 persons in whose names the land was vested in 1897 hold the land in a representative capacity or as absolute owners. There is evidence that they held the land as trustees only. To date there has been no succession to their interests. The land has not been set aside as a Māori reservation.

As there is no application under section 18(1)(a) or section 128 to determine their ownership I am not called upon to rule on the matter. Nevertheless, I direct the Registrar to note the memorial schedule in MLIS to the following effect: “There shall be no succession pending the Court determining whether or not the owners hold the land as trustees.”

<sup>16</sup> 5 Taitokerau MB 121-122 (5 TTK 121-122).

<sup>17</sup> Ibid.

**Does evidence from the parties in this proceeding demonstrate that the land is held on trust?**

[23] Most of the parties in this proceeding have relied on the Court records when presenting their case.

[24] Taoho Tane appeared on behalf of the Te Roroa Whatu Ora and Manawhenua Trust Board. This is the post-settlement governance entity for Te Roroa. Mr Tane referred to the Te Roroa claim presented to the Waitangi Tribunal in support of his argument that the land should be held on trust for all hapu of Te Roroa.<sup>18</sup>

[25] The Tribunal commented on this claim in its 1992 Te Roroa Report:<sup>19</sup>

In our view, the claim that Koutu reserve had always been recognised as a hapu communal estate held under kaitiaki (trustee) ownership (C31:3) needs to be re-assessed in the light of Waipoua No 2 alienations which are examined in the next section of this report. These indicate that by 1895, Rewiri Tiopira and Hapakuku Moetara were well aware that those named on the title were in law absolute owners; as do subsequent applications for succession orders to those named on the title for Koutou which were not heard.

[26] Mr Tane also confirmed that, as part of the Te Roroa settlement, land at Kawerua, which surrounds the Koutu block, was returned to Te Roroa, but the Koutu block was not. An easement was put in place over those Kawerua lands, as part of the Te Roroa settlement, to provide access to the Koutou block.

**Do those listed on the title own the land personally or hold it on trust?**

[27] I am primarily guided by the evidence contemporaneous with the issue of the title orders.

[28] While the original certificate of title issued in 1872, and the Court minute and order on which that title was based, have not been located, the subsequent records show the land was vested in Tiopira Rehe and Peneti Pana. I find that they held the land on trust for Te Roroa. This was confirmed in the Court minute of 27 February 1894 when Rewiri Tiopira sought to succeed to his father concerning the Koutu block. The Court granted that order but determined that Rewiri would succeed “as trustee for Te Roroa tribe”.

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<sup>18</sup> Mr Tane also relied on the various Court records already referred to.

<sup>19</sup> Waitangi Tribunal *Te Roroa Report* (Wai 38, 1992) at 96.

[29] This is consistent with Hapakuku Moetara's evidence in 1897, where he referred to Tiopira and Peneti as trustees. A notation on the record sheet for the Koutu block also states the land was "originally held in trust for Te Roroa Hapu". This notation referred to Judge Manning's minute which must contain the original title determination.

[30] I also find that the 12 named on the title in the 1897 order, owned the land personally. They did not hold the land on trust.

[31] The order in council in 1895 specifically empowered the Court to determine whether the land was held in trust, and if so, who was beneficially entitled to the land. That came before the Court in 1897. As noted, Hapakuku gave evidence that Tiopira and Peneti were trustees. The case was adjourned to allow Hapakuku to prepare a list of owners. The following day Hapakuku presented the list of 12 persons, no objections were received, and the Court granted an order confirming those 12 persons as the beneficial owners in the land. Hapakuku then applied for Rewiri Tiopira's interest in Koutou to be succeeded by his sister Hiria. That order was also granted.

[32] The terms of the sealed order are clear. It refers to the Court's jurisdiction under s 14(10) of the 1894 Act. This is the specific provision which empowered the Court to determine whether land was held in trust, and if so, to vest it in the beneficial owners. The terms of the order found that a trust did exist and ordered that the persons named in the schedule are the persons beneficially entitled under the trust. This schedule included Hiria Tiopira who succeeded to her brother Rewiri. The order also cancelled the previous certificate of title and required a Crown grant in favour of those named in the schedule in lieu of the original title. This is a specific power granted to the Court per s 14(10) of the 1894 Act where it finds that the land is held on trust.

[33] I accept that the correspondence to and from the Registrar in 1944 and 1945 states that those 12 owners hold the land as trustees. However, there is no evidence to support those assertions from the Registrar. Those letters cannot displace or outweigh the effect of the 1897 order.

[34] I note the comment from Judge Ambler that there is evidence that those persons held the land as trustees only. This comment is obiter. The only application before Judge

Ambler was to determine the status of the land. He said he was not called upon to rule on whether the land was held in trust and left this to be determined when an appropriate application came before the Court.

[35] I have also taken into account Mr Tane's argument that this land holds special significance for Te Roroa. He argues the land should be held on trust for the whole of Te Roroa. I do not doubt that this land holds special significant for Te Roroa. However, that, on its own, does not support a finding that those 12 on the title hold the land as trustees.

[36] Mr Tane's position, on behalf of Te Roroa, is not new. They put forward the same argument in their historical claims before the Waitangi Tribunal. The Tribunal did not accept the argument and found that Rewiri Tiopira and Hapakuku Moetara were aware that those named on the title were absolute owners. That finding is not binding in this proceeding, but it is consistent with my finding that those 12 persons named on the title are absolute owners, not trustees.

### **Decision**

[37] Per ss 37(3), 18(1)(a) and 18(1)(i) of the Act, I determine that those 12 persons named on the title to the Koutu block are the absolute owners of the land as tenants in common in equal shares. They do not hold the land on trust.

[38] During this proceeding, questions were raised as to what should now happen with the land. Views were expressed that the descendants of those 12 owners should succeed, that the land should be vested in a trust, or set aside as a reservation. The current application is concluded. Further applications will have to be filed to address those issues.

Pronounced at 4:30 pm in Whangārei on Tuesday this 20<sup>th</sup> day of August 2019.

M P Armstrong  
**JUDGE**